

MEMORANDUM

January 17, 2007

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: RICHARD K. MASON
Assistant County Counsel
Health Services Division

RE: County of Los Angeles v. Sandra Shewry and State Department of Health Services
Los Angeles Superior Court Case No. BS 101442

DATE OF INCIDENT: December 1996 through September 2004

AUTHORITY REQUESTED: County would receive approximately \$48,478.

COUNTY DEPARTMENT: Department of Health Services

CLAIMS BOARD ACTION:



Approve



Disapprove



Recommend to Board of Supervisors for Approval



ROCKY ARMFIELD

, Chief Administrative Office



JOHN F. KRATTLI

, County Counsel



MARIA M. OMS

, Auditor-Controller

on February 1, 2007

SUMMARY

This is a recommendation to settle a County lawsuit against the State Medi-Cal program which challenges the denial of Treatment Authorization Requests ("TARs"). The proposed settlement would cover the following:

This is a lawsuit pending in the Superior Court. This lawsuit concerns a total of 242 days of acute care provided to Medi-Cal patients at LAC+USC Medical Center ("LAC+USC"). The maximum value to the County of this lawsuit is approximately \$287,990.

The lawsuit includes services provided from December 1996 through September 2004.

Under the proposed settlement, the State will process the TARs for 38 acute days and 13 acute administrative days, thus, allowing the County to receive reimbursement in the amount of approximately \$48,478. Additionally, the County will be able to claim all 51 of the days in the settlement for purposes of calculating its Disproportionate Share Hospital ("DSH") payments.

LEGAL PRINCIPLES

The Medi-Cal program is obligated to pay for inpatient treatment only to the extent that the hospital has obtained an approved TAR from the Medi-Cal program for each day of the hospital stay. The Medi-Cal program has an obligation to grant a TAR if the patient is entitled to full scope Medi-Cal benefits and there is a showing of medical necessity based upon information in the patient's medical record. Many of the patients whose TARs were denied were undocumented aliens, also known as limited scope Medi-Cal patients, who are only entitled to Medi-Cal if the care provided constituted emergency services.

SUMMARY OF FACTS

Each County hospital seeks a TAR for each day of inpatient care to a Medi-Cal beneficiary. When a TAR is denied and the hospital questions the denial, the matter is usually resolved through discussions between hospital personnel and Medi-Cal officials. If not resolved through this informal process, two levels of more formal appeal are available. However, when a dispute cannot be resolved through the appeal process, the only effective method for further challenge is through litigation like this case.

TAR denial litigation is usually not very cost effective to pursue, since each day of care must be justified by its own particular set of facts and the cost to prove and litigate the claim can often exceed its value. Nevertheless, the County

Department of Health Services periodically identifies for pursuit through litigation denied TARs where services were provided and where there appears to be a basis for questioning the State's denial. The County has filed a number of these cases over the years.

The vast majority of TARs are approved either when initially presented to the State or as the result of informal discussions at the hospital after a denial. Some TAR denials are reversed at the first or second level of appeal. Consequently, TAR denials which are taken to litigation are the ones most difficult to overturn, and their settlement value is relatively low.

This lawsuit challenges denied TARs for 242 days of care at one County hospital during the period of December 1996 through September 2004. The maximum value to the County for these days of care is approximately \$287,990.

STATUS OF CASE

This case is being settled at an early stage of litigation as the Department, through counsel, has established a practice of entering into negotiations with the State shortly after filing these types of lawsuits. This allows us to resolve the issues without incurring the extensive costs associated with discovery and trial preparation. Unfortunately, the State attorneys have required that we file the litigation before they are willing to enter into settlement negotiations. Also, the State attorneys require that the settlement negotiations be conducted on a patient day by patient day basis, rather than on an overall settlement percentage.

EVALUATION

The total settlement amount of approximately \$48,478 is equal to approximately 16.8% of the total amount at issue. Because the TAR denials under review in any litigation are denials which have been upheld through several reviews, they necessarily are denials which will be difficult to overturn.

Additionally, the federal court of appeals has established an extremely narrow definition of "emergency," in the context of determining the scope of services covered under Medicaid for undocumented aliens. If this definition were applied to the claims at issue involving services to undocumented aliens, the court would likely determine that a large percentage of the TARs at issue in the litigation that involve care to undocumented aliens are not covered by Medi-Cal because the services do not meet the definition of "emergency" care. This case involves a significant number of TARs for services provided to undocumented aliens.

Additionally, the expense and County resources associated with litigation of these types of cases are significant, given the number of TARs involved and the

factual dependent nature of the litigation. Therefore, it is believed that the proposed settlement is comparable, if not better, than the County likely would recover if this case were litigated. The attorney fees and costs incurred by the County in this case are approximately \$19,700.

We join our private counsel of Foley and Lardner LLP in recommending settlement of this lawsuit. The Department of Health Services, which participated in the settlement discussions, is fully in support of this settlement.

APPROVED:

A handwritten signature in black ink, appearing to read "Richard K. Mason", written over a horizontal line.

RICHARD K. MASON
Assistant County Counsel

RKM:bdv